

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH A. KENNEDY,)	
Plaintiff,)	
vs.)	No. 3:16-CV-05694-RBL
BREMERTON SCHOOL)	
DISTRICT,)	
Defendant.)	

30(b)(6) VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION
OF

BREMERTON SCHOOL DISTRICT By AARON LEAVELL

July 11, 2019

Tacoma, Washington

REPORTED BY: Margaret Walkky, CCR, RPR, RMR, CRR

Court Reporter, License No. 2540

Job no: 25565

1 6, that you are verifying the completeness and
2 accuracy of the District's responses to these
3 interrogatories?

4 A. Yes.

5 Q. I want to just draw your attention to
6 interrogatory No. 6, which goes from the bottom of
7 page 5 over to the top of page 6. Go ahead and
8 review that and let me know when you're done.

9 A. Okay, I'm done.

10 Q. That interrogatory, the response to
11 that interrogatory states, "Superintendent Aaron
12 Leavell was the sole decisionmaker."

13 Do see that?

14 A. Yes.

15 Q. And that was in response to an
16 interrogatory that states, "Identify all participants
17 in the decision to suspend Coach Kennedy."

18 Do you see that?

19 A. Yes.

20 Q. Do you agree that you were the sole
21 decisionmaker in the decision to suspend Coach
22 Kennedy?

23 A. Yes.

24 Q. Go ahead and set that aside.

25 I want to talk just a little bit about

1 A. I would not have been involved. Had he
2 applied for an assistant coach position, I would not
3 have been involved in that decision.

4 Q. So you wouldn't have cared if Coach
5 Kennedy was rehired and allowed to continue praying
6 at midfield?

7 A. No, I didn't say that. I just said I
8 would not be involved in the process at that level of
9 hiring any assistant coach, whether it was
10 Mr. Kennedy or not.

11 Q. I just want to make sure, your
12 testimony today is that if Mr. Kennedy reapplied to
13 Bremerton High School to be an assistant football
14 coach, you would not have stopped that process based
15 on your prior direction to Mr. Kennedy?

16 A. That part would be correct. I would
17 not have stopped that process.

18 Q. If the decision had been made to rehire
19 Mr. Kennedy and that Mr. Kennedy could continue
20 performing the prayer, is it your testimony that
21 Bremerton School District would have taken no action
22 in response to that?

23 A. We would not have allowed him to
24 continue, if he were rehired, to violate directives
25 around religious activity.

1 say I first met him through my contacts with Denise,
2 but I don't really remember.

3 Q. About how much time have you spent with
4 Mr. Kennedy outside of the work context?

5 A. Not much time at all.

6 Q. Okay. So most of your interactions
7 with Mr. Kennedy have come in the course of both of
8 your employments?

9 A. Yeah, yeah, or his wife's employment,
10 when Joe's visiting, yeah.

11 Q. Do you understand Mr. Kennedy to be a
12 religious man?

13 A. Yes.

14 Q. Have you ever questioned the sincerity
15 of his faith?

16 A. No.

17 Q. Are you aware Mr. Kennedy became a
18 football coach around 2008 for Bremerton High School?

19 A. I am aware of that, yes.

20 Q. At that time were you still principal
21 of Bremerton?

22 A. Yes, I was.

23 Q. And you left Bremerton High School in
24 2009; is that right?

25 A. Yes.

1 do you -- at the football games that you did attend,
2 do you ever remember noticing Coach Kennedy engaging
3 in any prayer-related activity?

4 A. No, I did not.

5 Q. To your knowledge, Joe Kennedy was a
6 good example to the young men that were participating
7 in Bremerton High School football?

8 A. Absolutely.

9 Q. He was a good mentor for them?

10 A. Yes.

11 Q. Do you think he had a positive
12 influence on the lives of those young men?

13 A. I sure do.

14 Q. Do you ever receive -- let's break this
15 up before September 2015 and after.

16 So focusing on before 2015, did you
17 ever receive any complaints from players specifically
18 about Coach Kennedy?

19 A. No.

20 Q. Did you ever receive any complaints
21 from parents about Coach Kennedy?

22 A. No.

23 Q. And did you ever receive any complaints
24 from coaches about Coach Kennedy?

25 A. No.

1 Q. Did you ever receive any complaints
2 from any of the other members of the Bremerton High
3 School administration about Coach Kennedy?

4 A. No.

5 (Exhibit-7 marked.)

6 Q. Dr. Leavell, the court reporter has
7 handed you Exhibit-7 and Exhibit-7 is a set of
8 documents that we received from the District in a
9 public records request.

10 A. Okay.

11 Q. That consists of a series of coaching
12 evaluations for Coach Kennedy that span 2008 to, I
13 believe 2012 is the latest one that was included in
14 this packet. Do you see those?

15 A. Yes, sir.

16 Q. Do you remember reviewing these
17 coaching evaluations at all in the course of your
18 investigation, these prior coaching evaluations?

19 A. Yes. I was trying to think if I
20 reviewed them all, but yes, I reviewed them.

21 Q. You generally remember looking at his
22 file --

23 A. Yes.

24 Q. -- and his prior evaluations?

25 A. Yes.

1 Q. And do you ever remember seeing any
2 concerns raised in these evaluations about Coach
3 Kennedy's performance?

4 A. Can I take a moment to look through
5 them?

6 Q. Feel free.

7 A. Okay.

8 Okay.

9 Q. My question was, do you ever remember
10 seeing any concerns raised in Coach Kennedy's
11 personnel file about his performance?

12 A. So I've not looked through his entire
13 personnel file, but the documents here before me, no,
14 no concerns ever came to me.

15 Q. And thinking back to your investigation
16 in 2015 when you reviewed various documents including
17 these on Coach Kennedy, do you remember ever seeing a
18 document that raised concerns about his performance
19 as a coach?

20 A. No, nothing was brought to my
21 attention.

22 Q. In the documents, the performance
23 evaluations that we've handed to you and marked as
24 Exhibit-7, there was always the recommendation to
25 rehire Coach Kennedy?

1 A. In my mind, yes, I assumed we were
2 moving forward, moving on, if you will, from that
3 immediate issue, yes.

4 Q. There was a varsity football game the
5 next day, September 18, which was a Friday. Is that
6 your recollection?

7 A. Yes.

8 Q. Were you at that game?

9 A. I believe I was at that game.

10 Q. Did you attend specifically because of
11 wanting to see what would happen with the post-game
12 activities?

13 A. I attended, A, because I attend
14 football games and like to support the team, and B, I
15 wanted to make sure that we had as many
16 administrative staff there as possible because there
17 was still a large uprising of social media people
18 saying they were coming to support Coach Kennedy, and
19 so I attended primarily for safety reasons.

20 Q. What do you remember about that
21 September 18 game?

22 A. I don't remember much about that game.
23 I don't remember much about it.

24 Q. Do you remember there being any crowd
25 control issues?

1 clear in my mind there was not the game that I was
2 thinking of.

3 Q. It was the game that you were just
4 describing a few minutes ago was -- you may have had
5 them mixed up?

6 A. Yes.

7 Q. You would rely on what you said in this
8 email the next morning as a more accurate
9 representation of what had happened?

10 A. I would, yes. Thank you.

11 Q. So based on this email, it did not
12 appear that there was any real problems that you saw
13 with the way the post-game activities were conducted?

14 A. Correct.

15 Q. You noted that, this is the third
16 sentence, "The post-game gathering was conducted
17 well, and did not last that long."

18 Is that what you wrote in this email?

19 A. I did, yes.

20 Q. No reason to dispute that now?

21 A. No.

22 Q. Do you recall between now, --

23 A. I got you.

24 Q. -- I think it's between September 18
25 and the middle of October whether you attended any

1 other Bremerton High School football games?

2 A. I don't recollect if I did or not. I
3 did not attend all of them. I do remember that.

4 Q. You don't remember one way or the
5 other, though, whether you went to any particular
6 games in the time period from here until the prayer
7 issue resurfaced?

8 A. No, I don't remember. If I did, I may
9 have stayed for a half and, you know, went home. I
10 don't remember at this point.

11 Q. Let me ask this a different way.

12 Do you remember ever going to a game
13 between the September 18th game and when the prayer
14 issue resurfaced again with the purpose of observing
15 Mr. Kennedy's actions?

16 A. Yes. When he resumed his actions, I
17 did attend at least one game.

18 Q. My question was before that happened.

19 A. Yeah, I don't think I did, but --

20 Q. Did you ever assign anybody from the
21 District to go and observe and listen to what
22 Coach Kennedy was saying at this, the post-game?

23 A. Yeah, so I don't assign people to go to
24 games, but the high school administration and
25 athletic director and there are some staff that are

1 paid to supervise games, attend them. And I believe
2 I had asked either John Polm or one of the assistant
3 principals to see if there was anything being stated
4 other than a motivational speech.

5 Q. So as of Saturday, September 19, 2015,
6 did you personally think that you had moved past this
7 issue?

8 A. I was hoping that we had moved past
9 this issue, certainly.

10 MR. ANDERSON: Let's go ahead and go
11 off the record.

12 THE VIDEOGRAPHER: We're going off the
13 record at 11:46 a.m.

14 (Lunch recess 11:46 a.m. to 12:37 p.m.)

15 THE VIDEOGRAPHER: We're back on the
16 record. This is the beginning of disk number 3. The
17 time is 12:37 p.m.

18 BY MR. ANDERSON:

19 Q. Dr. Leavell, I want to come back to
20 Exhibit-17, which I think was the last one we were
21 looking at, your email to the board members of
22 September 19, 2015. Do you have that back in front
23 of you?

24 A. I do.

25 Q. This was your report from the

1 My question for you is, if you look at
2 page 5, which follows the discussion of the case law,
3 if you want to just look at the top paragraph on that
4 page, I'll have a question for you about this.

5 The first sentence in that paragraph
6 says, "No reasonable observer could conclude that a
7 football coach who waits until the game is over and
8 the players have left the field and then walks to
9 midfield to say a short, private, personal prayer is
10 speaking on behalf of the state."

11 Do you see that?

12 A. I see that.

13 Q. And that's consistent with your
14 understanding or this sentence is consistent with
15 your understanding that Coach Kennedy was now asking
16 to engage in a short, private, personal prayer at
17 midfield after the game?

18 A. Yes. I'm just -- I'm not sure if he
19 meant while there was still folks in the stadium, or
20 after everyone had left and he returned to the
21 stadium, but...

22 Q. What it states here is after the game.
23 It does not specify whether it was immediately or
24 sometime later; is that what you're saying?

25 A. Yeah, that's what I was asking.

1 that way. All coaches have the supervision duties
2 after the game is over, and so he was still on duty
3 and had supervision tasks to deal with as expected of
4 all assistant coaches.

5 Q. So your point there was not that a
6 brief, private, personal prayer itself was some
7 abdication of supervision responsibilities, but that
8 he had responsibilities generally so he was still
9 acting as a coach when he was engaged in that
10 activity?

11 A. Yes.

12 Q. The District certainly wouldn't
13 discipline anybody for engaging in a 15 to 30-second
14 phone call immediately after a football game, right?

15 A. I don't know. I would suppose there
16 are different scenarios where that would not be
17 appropriate to make a phone call immediately
18 following a football game.

19 Q. So I want to be -- I want the record to
20 be clear here. Is it your position if the District,
21 if it saw an assistant football coach looking at his
22 phone for 10 seconds immediately following a football
23 game, the District would engage in a disciplinary
24 action?

25 A. I would say --

1 Q. That's a yes or no question, sir.

2 A. No.

3 Q. If, for example, an assistant coach
4 went to go greet a spouse in the stands immediately
5 following a game for 30 seconds to a minute, the
6 District would not take disciplinary action against
7 that assistant coach, correct?

8 A. Correct.

9 Q. So I want to move now to the third
10 page. We were just on the second page. If we go to
11 the third page, the second paragraph that begins,
12 "Moreover," let me know if you have that in front of
13 you.

14 A. Okay.

15 Q. The second sentence of that paragraph,
16 Dr. Leavell, states, "He is free to engage in
17 religious activity, including prayer, even while on
18 duty, so long as doing so does not interfere with
19 performance of his job duties, and does not
20 constitute District endorsement of religion."

21 Did I read that correctly?

22 A. Yes.

23 Q. Here the District's concern was that
24 Mr. Kennedy's prayer would constitute District
25 endorsement of religion; is that right?

1 know who else I would have asked.

2 Q. You recall yourself being in
3 attendance?

4 A. I'm pretty sure that I was at that
5 game.

6 Q. You can't be certain?

7 A. Well, I can't be certain. I was just
8 thinking back to when I had the games confused in my
9 head before. I mean, it was four years ago, I'm
10 sorry. I believe I was in attendance at this game.

11 Q. Okay.

12 A. Yes, I believe I was there.

13 Q. Do you recall Coach Kennedy engaging in
14 prayer at the 50-yard line at the conclusion of the
15 Centralia game?

16 A. Yes, I believe so.

17 Q. Do you recall about how long that
18 prayer lasted?

19 A. No, I don't recall, but I believe it
20 was less than a minute.

21 Q. Yeah.

22 A. About a minute.

23 Q. Other than Coach Kennedy, do you
24 remember whether anybody else was on the field with
25 him?

1 Q. It states, "When a school official
2 decides to lead a prayer, he or she puts students in
3 an awkward position."

4 Do you see that?

5 A. I do.

6 Q. Do you agree with that?

7 A. Yes.

8 Q. Now, if you look at your email response
9 to Mr. Dorn at the top of Exhibit-29, can you read
10 the third sentence out loud, the one that begins "The
11 issue"?

12 A. "The issue is quickly changing as it
13 has shifted from leading prayer with student
14 athletes, to a coach's right to conduct a personal,
15 private prayer on the 50-yard line."

16 Q. You just testified that you don't
17 have -- that you agree with the statement that you
18 don't have a problem with students or staff
19 exercising their right to silently pray on their own,
20 right?

21 A. Correct.

22 Q. Your problem with Coach Kennedy's
23 prayer was the timing of the prayer, specifically
24 that it was right after the game, and then the
25 location of the prayer, that it was at the 50-yard

1 A. Correct.

2 Q. Why was this decision made to have this
3 letter issued from you as opposed to Mr. Ganson?

4 A. Because I am the superintendent who was
5 being the decisionmaker in this case, and because it
6 involved a topic that is not my area of expertise, I
7 relied pretty heavily on legal advice on how to
8 handle this from the school district perspective.

9 Q. When you say topic not within your area
10 of expertise, you mean First Amendment constitutional
11 law?

12 A. Yes.

13 Q. Holdings of cases about what school
14 officials can or can't do.

15 A. Yes.

16 Q. Is that correct? Okay.

17 So I want to walk through this letter
18 beginning with the first paragraph. Can you just
19 read that paragraph out loud?

20 A. "On September 17, 2015, I provided you
21 with guidance and a set of standards for compliance
22 with Bremerton School District Board Policy 2340.
23 Those directives were in response to your prior
24 practices involving on-the-job prayer with players in
25 the Bremerton High School football program, both in

1 the locker room prior to games, as well as on the
2 field immediately following games. In general, I
3 believe that you have attempted to comply with the
4 guidelines set forth in that letter."

5 Q. What did you mean by that last
6 sentence, "In general, I believe that you have
7 attempted to comply with the guidelines set forth in
8 that letter"?

9 A. I believe that Mr. Kennedy was at times
10 attempting to abide by the directives of the District
11 in the sense that he was not leading student-led
12 prayer as he previously was, technically in the
13 locker room and immediately following the games.

14 Q. The difference here was that he was
15 attempting to do a personal prayer, as opposed to
16 having a coach-led student prayer?

17 A. I mean, that's what it appeared his
18 intentions were, yes.

19 Q. That was what you were referencing here
20 when you say you believe he attempted to comply with
21 the guidelines?

22 A. Yes.

23 Q. Then you go on to state in the next
24 paragraph, recap what had happened at that Centralia
25 game that we were discussing; is that right?

1 Q. Did you ask any of your administration
2 staff to be at that game, at either of those two
3 games?

4 A. Yes.

5 Q. Who did you ask to be there?

6 A. They would have been there anyway to
7 supervise, but I believe I asked -- it was either the
8 principal, John Polm, or I think it was the assistant
9 principal, Ryan Nickels.

10 Q. I want to talk about the first video,
11 which was video from the -- after the varsity game
12 against North Mason.

13 A. Okay.

14 Q. This was the one that was a little
15 grainer that we had to watch twice. Did you recall
16 seeing Coach Kennedy on a knee near the middle of the
17 field at a one point in that video?

18 A. Yes.

19 Q. Would you agree that the time he was on
20 a knee was about 15 seconds or less?

21 A. Yes.

22 Q. Did you see any other students praying
23 with him at that time?

24 A. Not at that time.

25 Q. My question is specifically about the

1 October 23rd game. So your testimony is you didn't
2 observe any students praying with him?

3 A. It's hard to make it out, but not that
4 I could see.

5 Q. Based on the video?

6 A. Based on that video, no.

7 Q. At that point in time, the Bremerton
8 High School students were moving out of the handshake
9 with the opposing team going to go sing the fight
10 song; is that what it looked like?

11 A. Well, it looked like they were moving
12 out of there -- I don't know if that is something
13 they do on away games. I don't know if they go to
14 sing the fight song or not. So I can't verify that.

15 Q. Was that an away game, the North Mason
16 game?

17 A. It looks like it, but I don't know.

18 Q. When you say it looked like it, what
19 was it, the color of uniforms?

20 A. It didn't look like our home uniforms
21 and it really didn't look like our field, so I think
22 that was an away game.

23 Q. You don't know one way or the other
24 whether the fight song is a tradition that is
25 followed at away games?

1 A. I don't, actually. I assumed it was.
2 I think it's a home game tradition, but I could be
3 mistaken.

4 Q. And in that video, did you see other
5 football coaches milling about in that immediate
6 aftermath of the game?

7 A. It appeared that I saw one coach
8 talking with another, with a North Mason coach.

9 Q. You would agree that the 10 to 30
10 seconds, however long it was that coach was on a knee
11 based on that video, it did not appear coach was
12 ignoring supervision of any of the players?

13 A. Well, for that time that he was doing
14 that, if he was kneeling with his eyes closed, it
15 would be hard to do supervision.

16 Q. But no different than if a coach was
17 briefly checking his phone for a sports score?

18 A. I don't know. I mean, if the coach is
19 checking a sports score, he might be able to have
20 more of a line of sight, his eyes open.

21 Q. What about if the coach had to kneel
22 down and tie his shoe, look at his shoe, would you
23 think the coach was ignoring his supervisory
24 responsibilities to kneel down to tie his shoe for 20
25 seconds?

1 A. No.

2 Q. The second video was the junior varsity
3 game. That was again the video that had a little bit
4 of a higher resolution.

5 A. Uh-huh.

6 Q. Similar question, it appeared to be
7 that coach kneeled down for about 10 to 20 seconds,
8 approximately, for that prayer?

9 A. It appeared to be.

10 Q. And you saw the student athletes return
11 to coach only after he had completed the prayer?

12 A. Yes, it sounded like after they had
13 sang the fight song.

14 Q. Do you know whether the North Mason JV
15 game was home or away?

16 A. That appeared to be at home.

17 Q. And you base that off of the appearance
18 of the field?

19 A. Again, I think same scenario, it looked
20 like the home uniforms and it looked like our field.

21 Q. Are the purple uniforms traditionally
22 the home uniforms?

23 A. They're blue.

24 Q. Blue, excuse me.

25 A. Blue and gold, yes.

1 Q. The blue and gold?

2 A. (Nods head.)

3 Q. Okay, and again, the student athletes
4 returned to Coach Kennedy only after he prayed and
5 they sung the fight song, right?

6 A. That's what it looks like.

7 Q. So they were still under his
8 supervision at that point in time?

9 A. As they came back to him, yes.

10 Q. Yes.

11 And it was based on Coach Kennedy
12 continuing to engage in prayer at these two North
13 Mason games, first the varsity one and then the
14 junior varsity one, after receiving this additional
15 letter from you on October 2rd, that was the basis
16 for your decision to place him on administrative
17 leave?

18 A. My basis for putting Coach Kennedy on
19 leave was that he continued to disobey directives
20 from me. He was invited to come meet with me to
21 further discuss any accommodations or solutions, and
22 he did not engage on that level.

23 He continued to do exactly what his
24 position and his position of his attorneys outlined
25 for him to do in the letter that was sent to me and

1 made it very clear in that letter that the only
2 accommodation that would be suitable for Coach
3 Kennedy was to continue the exact practice that he
4 was already engaged in.

5 Q. That practice was the practice that we
6 saw on those two video clips that we just watched
7 from those North Mason games?

8 A. Yes.

9 Q. If coach had stopped engaging in the
10 type of prayer that we just saw on those videos for
11 those North Mason games, you would not have acted to
12 place him on leave; is that right?

13 A. If Coach Kennedy had reengaged with us
14 as invited and we were able to come to an agreement
15 on an accommodation that meets his religious needs
16 and didn't jeopardize the District with litigation,
17 then there would be no -- there would be no reason to
18 continue to place him on leave, but --

19 Q. When you say -- sorry.

20 A. I was going to say, but he continued to
21 conduct himself in the manner in which he said he was
22 going to, and so I continued to write letters of
23 direction that are nondisciplinary in hopes that we
24 could come to a resolution so that Coach Kennedy
25 could continue coaching our students.

1 Q. When you said jeopardized the District
2 with litigation, you're referring to potential
3 litigation that could be brought against the District
4 for the District violating the First Amendment by
5 allowing Coach Kennedy to engage in the prayer; is
6 that right?

7 A. Correct, yes, correct.

8 Q. And just so we're clear for the record,
9 when you said, when you referred to Coach Kennedy
10 conducting himself in that manner, you're referring
11 to the manner, you're referring to the prayer like we
12 just saw in the two videos?

13 A. I'm referring to him participating in
14 overt displays of religious activity.

15 Q. Such as kneeling and bowing one's head
16 on the middle of the football field after a game?

17 A. Yes, because he had told the world that
18 that is what he was doing. So yes.

19 Q. And then the District's view was, given
20 that context, him kneeling on the field would only
21 have been perceived as him actually engaging in
22 prayer, and the District allowing him to do that
23 would be the District effectively saying this is
24 okay, this is a permissible activity for a coach
25 after a game?

1 A. Yes.

2 Q. Is it your testimony today that
3 consistent with the representations made here to the
4 government, that the District's course of action in
5 this matter has been driven solely by concern that
6 Mr. Kennedy's conduct might violate the
7 constitutional rights of students and other community
8 members, thereby subjecting the District to
9 significant potential liability?

10 A. Yes.

11 Q. And that would be a true, accurate and
12 complete description of the reason for the District's
13 actions?

14 A. Yes, it's accurate.

15 MR. ANDERSON: I don't have any further
16 questions at this time.

17 MR. TIERNEY: I have three or four
18 questions.

19

20 E X A M I N A T I O N

21 BY MR. TIERNEY:

22 Q. Could you find Exhibit-20 for me,
23 please.

24 A. Okay.

25 Q. Could you turn to page 5 of that.

S I G N A T U R E

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof. Signed in.....WA on the.....day of....., 2019.

.....
AARON LEAVELL 30(b)(6)

Taken: July 11, 2019

C E R T I F I C A T E

STATE OF WASHINGTON)ss.

COUNTY OF KING)

I, Margaret Walkky, the undersigned Registered Merit Reporter and an officer of the Court for the State of Washington, hereby certify that the foregoing 30(b)(6) deposition upon oral examination of AARON LEAVELL was taken before me on July 11, 2019 and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome;

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition, within 30 days, upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this date: July 22, 2019.

.....
Margaret Walkky, Registered Merit Reporter
Certified Court Reporter No. 2540 License
expires July 18, 2020